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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10           IKE NJOKU,

11           Plaintiff,

12           v.

13           EVERGREEN SALES AND  
14           LEASE,

15           Defendant.

16           CASE NO. C17-0282JLR

17           ORDER DISMISSING  
18           COMPLAINT

19           Before the court is *pro se* Plaintiff Ike Njoku’s complaint (Compl. (Dkt. # 3))  
20           against Defendant Evergreen Sales and Lease (“Evergreen”). The court previously  
21           granted Plaintiff’s motion to proceed *in forma pauperis* (Dkt. # 2). For the reasons set  
22           forth below, the court dismisses Plaintiff’s complaint without prejudice. Plaintiff may  
file an amended complaint within 21 days of the filing date of this order.

Plaintiff alleges that he and Evergreen had a “spoken agreement” concerning the  
sale of A 2006 Range Rover Sport SUV for \$12,000.00. (Comp. at 2.) Plaintiff alleges

1 that he gave Evergreen \$12,000.00 “as a down payment” for the vehicle. (*Id.*) Plaintiff  
2 also alleges that Evergreen “refused to return [the] down payment[,] calling it a deposit  
3 and saying there are no refunds on deposits.” (*Id.*) Plaintiff asserts a claim in fraud. (*Id.*)  
4 The court also liberally construes Plaintiff’s complaint to assert a claim for breach of  
5 contract. *See United States v. Ten Thousand Dollars (\$10,000.00) in U.S. Currency*, 860  
6 F.2d 1511, 1513 (9th Cir. 1988) (“We have consistently held in this circuit that courts  
7 should liberally construe the pleadings and efforts of pro se litigants . . .”). Plaintiff  
8 seeks the return of his “down payment of \$12,000.[00].” (Compl. at 3.) Finally, on the  
9 Civil Cover Sheet, Plaintiff acknowledges that he is a citizen of Washington and that  
10 Evergreen is incorporated in Washington or has its principal place of business in  
11 Washington. (Civil Cover Sheet (Dkt. # 1-2) at 1.)

12 A complaint filed by any person proceeding *in forma pauperis* is subject to a  
13 mandatory *sua sponte* review and dismissal to the extent that it (1) “is frivolous or  
14 malicious,” (2) “fails to state a claim on which relief may be granted,” or (3) “seeks  
15 monetary relief against a defendant who is immune from such relief.” 28 U.S.C.  
16 § 1915(e)(2)(B)(i)-(iii); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (stating that  
17 28 U.S.C. § 1915(e)(2)(B) applies to both prisoners and non-prisoners proceeding *in*  
18 *forma pauperis*); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (“[S]ection 1915(e)  
19 not only permits but requires a district court to dismiss an *in forma pauperis* complaint  
20 that fails to state a claim.”). As noted above, because Plaintiff is proceeding pro se, the  
21 court construes his pleadings liberally. *See Bernhardt v. L.A. Cty.*, 339 F.3d 920, 925  
22

1 (9th Cir. 2003). Nonetheless, the court finds that Plaintiff's complaint fails to state a  
 2 claim for relief because the court lacks subject matter jurisdiction as discussed below.

3       Federal district courts are "courts of limited jurisdiction," possessing "only that  
 4 power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allapattah Servs.,*  
 5 *Inc.*, 545 U.S. 546, 552 (2005). The party invoking jurisdiction must allege facts that  
 6 establish the court's subject matter jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S.  
 7 555, 561 (1992). If a federal court determines that it lacks subject matter jurisdiction at  
 8 any time during a dispute, the court must dismiss the action. *See Fed. R. Civ. P. 12(h)(3);*  
 9 *Rosales v. United States*, 824 F.2d 799, 803 n.4 (9th Cir. 1987).

10       Plaintiff fails to allege facts that establish the court's subject matter jurisdiction.  
 11 On his Civil Cover Sheet, Plaintiff checks the box averring that the court has jurisdiction  
 12 because the United States government is the plaintiff. (*See Civil Cover Sheet at 1.*)  
 13 Inasmuch as Mr. Njoku is the plaintiff in this action, his allegation that the United States  
 14 government is the plaintiff is not true. In the "Jurisdiction" section of his form  
 15 complaint, Plaintiff simply states "other fraud." (Compl. at 3.) Asserting a claim for  
 16 common law fraud is not a valid basis for asserting this court's subject matter jurisdiction  
 17 either.

18       In general, federal court subject matter jurisdiction exists when either (1) a claim  
 19 arises under federal law, or (2) a lawsuit arises between citizens of different states and the  
 20 amount in controversy exceeds \$75,000.00. *See 28 U.S.C. §§ 1331-32; see also Erwin*  
 21 *Chemerinsky, FEDERAL JURISDICTION § 5.1 (5th ed. 2001) (listing other*  
 22 *non-exhaustive categories of subject matter jurisdiction).* Plaintiff's complaint fails to

establish either federal question or diversity of citizenship jurisdiction. First, Plaintiff alleges no federal cause of action, and indeed no facts that can be construed to support a federal cause of action. (*See generally* Compl.) Second, Plaintiff asserts that the parties are citizens of the same state: Washington. *See* 28 U.S.C. 1332; *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (“Section 1332 requires complete diversity of citizenship; each of the plaintiffs must be a citizen of a different state than each of the defendants.”); (*see* Civil Cover Sheet at 1). In addition, he seeks only \$12,000.00—well under the required jurisdictional amount of \$75,000.00. Therefore, the court must dismiss the complaint for lack of subject matter jurisdiction.<sup>1</sup>

However, the court GRANTS Plaintiff leave to amend his complaint in order to correct the deficiencies described above. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (“Unless it is absolutely clear that no amendment can cure the defect, however, a pro se litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action.”); *Lee v. City of L.A.*, 250 F.3d 688, 683 n.7 (9th Cir. 2001). Plaintiff’s amended complaint must correct the deficiencies noted above and properly allege some basis for federal court subject matter jurisdiction. *See Fed. R. Civ. P.* 8(a)(1) (“A pleading that states a claim for relief must contain . . . a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support.”).

<sup>1</sup> State courts are courts of general jurisdiction. See *Wash. Pub. Power Supply Sys. v. Pac. Nw. Power Co.*, 217 F. Supp. 481, 491 (D. Or. 1963) (“The Superior Court of the State of Washington is a Court of general jurisdiction.”). A plaintiff who asserts claims that do not form the basis for subject matter jurisdiction in federal court should ordinarily file his or her complaint in a state court.

The amended complaint must be filed under the same case number as this one, and will operate as a complete substitute for, rather than a mere supplement to, the existing complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The court DIRECTS Plaintiff to file his amended complaint no later than 21 days following the entry date of this order. The court WARNS Plaintiff that if he fails to timely comply with this order to file an amended complaint that corrects the deficiencies identified above, the court will enter a dismissal of his complaint without prejudice and without further notice to him.

Dated this 6th day of March, 2017.

John P. Blunt

JAMES L. ROBART  
United States District Judge